

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4932 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BISMILAKHANJI MOHMEDKHANJI

Versus

THE STATE OF GUJARAT

Appearance:

MR MH DAYAMAKUMAR for Petitioners
MR HM BHAGAT for Respondent No. 1
Mr. Sudhansu S. Patel, AGP for Respondent No. 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 04/10/2000

ORAL JUDGEMENT

The petitioners after his private forest land came to be acquired prayed for adequate compensation. Being aggrieved by the orders in that regard passed by the Acquisition Officer, and Gujarat Revenue Tribunal in appeal they preferring this application under Article 226 of the Constitution of India, challenge the legality & validity thereof.

2. Necessary facts may, in brief, be stated. The petitioners are the Ex-Jagirdars of village Vajiria. They were having the private forest land in Village Vajiria which was formerly the Jagirdari Village. The Gujarat Private Forest (Acquisition) Act, 1972, came into force and because of the operation of Section 3 of that Act the private forest land came to be vested in the State. The State Government then took the possession of the forest land under Section 6 of the Act. Thereafter for getting the compensation of the land as well as of the trees the application under Section 7 of the Act was made by the petitioners which came to be registered as PFA/44/83/Vajiria. By his order dated 29th March 1984 the Special Land Acquisition Officer awarded the compensation of Rs. 57,306/= together with interest of Rs. 25,343.51 ps., in all Rs. 82,649.51 ps. deducting the dues to be recovered, and refusing to award any compensation for the trees holding that no evidence in that regard was led by the petitioners. Feeling aggrieved by such order, the petitioners preferred the appeal being Appeal No. TEN.A.A. 98 of 1984 in Gujarat Revenue Tribunal, Ahmedabad, which came to be dismissed on 23rd December 1991 confirming the order passed by the Special Land Acquisition Officer. Against both the orders, this petition is filed challenging the legality and validity thereof.

3. This Court will not exercise the writ jurisdiction unless there is jurisdictional error or procedural error or the order is passed is arbitrary, unreasonable, or passed in bad faith. It is therefore the contention of Mr. Majmudar, the learned advocate representing the petitioners that in view of the Schedule as per Section 6 of the Act, the compensation of the land ought to have been awarded 100 times of the assessment value. In the case on hand, the assessment value was not fixed and on the basis of the adhoc value the assessment value was fixed and the compensation was awarded which was not just and proper for the authority. The authority ought to have first determined the assessment and then ought to have fixed the compensation. The receipts of the assessment paid were also produced but the same were not considered at all. Likewise the compensation regarding the trees is arbitrarily refused though it was alleged that in all there were 19315 trees and the said fact was also not denied filing written statement by the acquiring body. The authority ought not to have discarded this unassailed fact.

4. The learned A.G.P., Mr. Patel has taken me through the judgments of both the authorities and

submitted that for want of evidence the authorities were helpless in awarding the compensation as prayed for. Considering the evidence led by the petitioners the compensation has been awarded and that being just this Court will have no justifiable reason to interfere with the same. The petition being devoid of merits is required to be rejected.

5. It appears, reading the copies of the judgments produced by both the parties, that on the basis of the adhoc assessment the compensation is determined; though the receipt of the regular assessment was produced. The receipt on record is not considered and not discussed and kept out of consideration for no good cause. On the basis of the Collector's report regarding the adhoc assessment though there were regular assessments already made, the order is passed which can be termed arbitrary and unreasonable.

6. As per Section 6(b) of the Act, the acquiring body has also to pay the compensation separately for the trees. The compensation in that regard has to be calculated as per the table given in Part B of the Act. The authority has to calculate the number of the trees, the height of each tree, and the girth of each tree, and then as per the table, determine the compensation. The authority has rejected the claim holding that no evidence in this regard has been led. Reading Para 8 of the Judgment of the Special Land Acquisition Officer, it becomes clear that the petitioners in their application have alleged that there were 19315 trees and the table thereof was also annexed along with the application. When they accordingly put forth the case the acquiring body, if at all the case alleged was not true, ought to have denied the fact and put forth its case in defence but as stated by the petitioners on oath that in the written statement filed by the acquiring body there is no specific denial with regard to the case of the trees pleaded in the application. When a particular fact pleaded by the petitioners is not denied by the otherside in written statement, the question of leading evidence thereon on that issue, or insistence upon the evidence on that issue would not be necessary. If at all evidence in that regard is insisted it would be unjust. The Special Land Acquisition Officer and the authority hearing the appeal though the fact was unassailed, did not consider that aspect and rejected the claim holding that there was no evidence at all. Such rejection is certainly arbitrary and unreasonable.

7. At this stage the contention raised on behalf of

respondent No.3 the Forest Dept. is that under the Act the compensation separately for the trees is not to be awarded. The contention cannot find favour in view of the clear provisions of Section 6 of the Act and Part B to Section 6, which specifically provide that over and above the compensation for the land, compensation for the trees is also required to be awarded separately. When a similar question arose before this Court in the case of Kaviraj Ramlal Chaturbhuj V. Prant Officer, Dahod Prant & Anr. - XXV (2) GLR 1477, it is made clear that whenever the private forest land is acquired under the Act, the owner of the land is entitled to compensation for land as well as trees and the compensation for trees can be rejected only when the claim in that regard is reserved and right of the occupants is effaced. Here it is not the case that the claim for compensation for the trees was reserved and the right of occupants was effaced. The petitioners were therefore, entitled to reasonable amount of compensation for the trees, but as stated above the same is arbitrarily rejected.

8. For the aforesaid reasons, the order passed by the abovesaid two authorities are required to be quashed and set aside and the matter is required to be referred back to the Special Land Acquisition Officer for afresh consideration.

9. In the result, the application is allowed. The order passed by the Special Land Acquisition Officer on 29th March 1984 in Case No. PFA/44/83/Vajiria, and the order passed by the Gujarat Revenue Tribunal on 23rd December 1991 in Appeal No. TEN.A.A. 98/84 confirming the order of the Special Land Acquisition Officer, are hereby quashed and set aside. The matter is referred back to the Special Officer, Private Forest (Acquisition), Baroda, at present Navrangpura, Ahmedabad, for hearing the parties afresh affording reasonable opportunity, and passing the order in accordance with law. Rule accordingly is made absolute.

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